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DEPARTMENT OF ENERGY

PROPOSED CHANGES FOR DOE PART 810
ASSISTANCE TO FOREIGN NUCLEAR ACTIVITIES

NNSA - SNOPR ROLLOUT MEETING

Department of Energy
1000 Independence Avenue, S.W.
Forrestal Building
Washington, D.C.

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Capital Reporting Company

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1 P R O C E E D I N G S

2 MS. STRANGIS: My name is Katie Strangis. I
3 am in the NNSA Office of the General Counsel. And I
4 think most of you know me, either by face or by name.
5 Welcome you all for coming today and welcome to those
6 of you who called in on the phone. I think there are
7 quite a bit more people calling in than actually could
8 make it today.

9 A few of the ground rules. Just a reminder,
10 if you are not a DOE employee, you need an escort if
11 you leave this room, and we have people around that can
12 do that if you need to go to a restroom or something.
13 The way this is going to work is we have the panel up
14 here. Rich is going to go through the most recent
15 draft. And after that, we will be hearing from our
16 interagency partners. We have Steve Clagett from the
17 Department of Commerce, Mark Resner and Brooke Smith
18 from the NRC, and Dick Stratford from Department of
19 State.

20 We will take all questions at the end. We
21 will do a question and answer session. And for that,
22 we would appreciate it if you can stand up. And you

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1 have to speak into a microphone. So somebody will be
2 walking those around. If you are here, we would
3 appreciate it if you would state your name and
4 affiliation. And it would be very helpful for the
5 court reporter who is transcribing this if you could
6 also spell your name.

7 Just a reminder, this will be transcribed.
8 And it will be placed online in the docket for the
9 supplemental rule. And also just a reminder, we can
10 only talk about what is in the version that was
11 published last week in the Federal Register. So if
12 there are any questions that fall outside the scope of
13 what was in the supplemental draft, we will have to ask
14 our panel not to answer those. And, of course, you are
15 all welcome to submit any comments or questions online.

16 I think that is it. Take it away.

17 MR. GOOREVICH: Okay. Well, thanks to
18 everyone who's here and everyone who has called in for
19 taking the time this afternoon to listen to our
20 explanation of the draft rule.

21 I have two things that I am supposed to take
22 care of while I am up here at the podium. The first is

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1 some opening remarks, which we were hoping to have
2 Joyce Connery from the White House make.
3 Unfortunately, Joyce found out five minutes ago that
4 she could not make remarks off the record. And since
5 everything is being recorded and transcribed, it is
6 obviously on the record. So for the probably one and
7 only time that Joyce will let me -- I am going to put
8 my words in Joyce's mouth.

9 If Joyce could speak, what would she say?
10 Well, the first thing she would obviously say is it is
11 really good to be back here at DOE.

12 Joyce comes from DOE. She has very fond
13 memories of her time here at DOE. And what she would
14 say is this auditorium especially brings back a lot of
15 important memories for her. This is the place where we
16 come when we watch people retire or reorganizations are
17 announced. So one of two things is probably going to
18 happen for Joyce -- not me because I am speaking for
19 Joyce -- by the end of this. She's either going to
20 retire or be reorganized. So that is the first thing
21 she would say.

22 The second thing she would say is that this

1 supplemental rule, although it has taken quite a bit of
2 time to get out from the NOPR to the SNOPR, is a true
3 interagency product. And it is a result of a lot of
4 hard work for not only the staff within NNSA, the staff
5 within DOE, but also from the agencies that are
6 represented up here and for those that are also out,
7 sitting out, in the audience, which we'll hear from in
8 a little bit as well.

9 The idea behind the SNOPR and the NOPR was to
10 take a look at a rule that really no longer reflected
11 how proliferation was being conducted or how we saw
12 proliferation and, yet, also how industry was moving
13 forward. And the attempt to move from the NOPR to the
14 SNOPR is truly an interagency product. And I think
15 where we are is a lot of hard work from a lot of
16 different people from all over Washington. And so she
17 would certainly want to point that out and say thank
18 you to everyone for helping move that forward.

19 The other thing that Joyce would want to say
20 if she were up here is that the comments that are
21 reflected in the SNOPR also are a lot of hard work from
22 the commenters and from the public, being able to show

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1 us where there were concerns, where we could improve
2 the rule, and how we could do that. And I think
3 hopefully that will be reflected in the discussion that
4 we will have today.

5 We are doing this rollout a little bit
6 differently than we did the first, the NOPR, mostly
7 because we do want to be clear and show the interagency
8 agreement and interagency effort that went into this.
9 And that is why we have this panel of experts, which is
10 a little bit different than when we did the NOPR and
11 the webinar.

12 And I think, finally, what Joyce would want to
13 say is along the lines of thanking you for everyone
14 that is here and everyone who is on the call, we
15 understand this was a very tight deadline. We found
16 ourselves in a bit of a bureaucratic trap and having to
17 make some decisions. And essentially, we had to go
18 ahead and plan the date for a rollout and make it
19 public, but it had to be published and we had to get
20 the rule out. And we knew we were bumping up against
21 vacation time and the traditional vacation period that
22 people take. Our effort and our goal was to try and

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1 get this out as soon as possible, but understanding
2 that this is a tough time for people and people had
3 made plans and some people that maybe did not have a
4 lot of time to be able to begin to digest everything
5 that's in the SNOPR. One of the things that we wanted
6 to do was make sure that we did have an opportunity to
7 interface with the public about this rule as
8 comprehensively as possible. And, as we said in the
9 rule, there will be another public meeting for those
10 that either feel that they needed more time before this
11 one or couldn't make it, colleagues that are of people
12 who are here on the phone. If they're concerned, we
13 will be doing another similar type of public meeting,
14 probably in late September. We will have to find a
15 date. And the good news is we will do it at a hotel
16 where you don't have to, we don't have the security
17 issues to get in. But given the tightness of the time,
18 we decided to do it here and do it this way.

19 So is that all you would say if you were here,
20 Joyce? And, finally, because Joyce is speaking off the
21 record, she does want to wish a happy birthday to Rich
22 Fruehauf from Westinghouse, who decided that this would

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1 be the best way to spend his birthday, down here
2 learning about the SNOPR.

3 What else would anyone? A man who has got
4 everything, what does he need? He needs a SNOPR. So
5 that is it.

6 So now let's do this. Let me roll into my set
7 of slides, which will take us through the SNOPR. And
8 after that, then we will give the floor to Dick. We
9 will take a little break. And then NRC and Commerce
10 will have their slides. And then we will get into the
11 Qs and As.

12 Pretty simple agenda. Hopefully everyone will
13 learn a little something and we'll get through this in
14 a timely manner.

15 So let's go through this. So what is, for
16 those just to review, the scope of Part 810? Well, I
17 think, as everyone has heard, if you have come to part
18 of the webinar or you have heard the group of us talk
19 at any one of the many activities where we are asked to
20 speak, Part 810 implements Section 57B of the Atomic
21 Energy Act. And essentially, it says that it is
22 unlawful for any person to directly or indirectly

1 engage in the production of SNM, special nuclear
2 material, outside the United States, except upon
3 authorization of the Secretary of Energy and he makes a
4 determination with the concurrence of the State
5 Department that the transfer will not be inimical to
6 the interest of the United States. And it covers SNM
7 activities.

8 A couple of things about this. Number one,
9 this was what it said originally in the Atomic Energy
10 Act. Not too long ago, the NNPA amended this to say,
11 "engage or participate in." And you are going to see
12 that in the SNOPR, that we picked up the newer
13 statutory language and put it into there.

14 But what I really want to spend some time
15 talking about is this issue of the non-inimicality and
16 that it is in the common interests of the United
17 States. As you will look other places in the Atomic
18 Energy Act, where you will see non-inimicality
19 determinations, it generally means and you will
20 generally see it, where it says, in the national
21 security or the common defense and security of the
22 United States. What is interesting is -- and I have

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1 pointed this out before -- is that in 57B, where we
2 talk about it, it just says, "In the interest of the
3 United States." It allows the Department some
4 flexibility when looking at this into not just the non-
5 proliferation national security interests of a
6 particular activity or a particular technology
7 transfer, but it also allows us to take into account
8 other factors, including commercial.

9 So how do we classify Part 810? Well, we
10 classify it essentially in three different ways, the
11 activities in three different ways. There are those
12 that are exempt: 810.2. We tried to provide, as we did
13 in NOPR and we're doing here in the SNOPR, a clarified
14 technical scope, which is currently not in the current
15 regulation. And so that technical scope, which we're
16 linking a lot more directly in the SNOPR to the NRC in
17 the nuclear suppliers' group control list, lays out the
18 technical bounds for how we interpret the regulation
19 and how do we interpret the implementation of 57B. If
20 technically it is outside the bounds of what is
21 described in 810.2, then it is exempt. The rule
22 doesn't apply.

1 We can also have a group or a basket of
2 activities that we call generally authorized. And
3 810.6 in the SNOPR defines what is generally
4 authorized. And we will go through that in a little
5 bit. But this is where we have been able to make a
6 broad determination of categories of assistance, for
7 which the Secretary has made the non-inimicality
8 determination and do not require his specific approval.
9 He has essentially granted the approval based on the
10 technology or based upon the technology and the
11 cooperation with a particular entity or end user or
12 country.

13 And the last is the specific authorization.
14 And this is going to be described in the new
15 supplemental rule under 810.7. And this is where a
16 case-by-case inimicality determination by the Secretary
17 is required. And we talk in some detail of exactly how
18 that is going to take place.

19 Next one. So general and specific
20 authorizations. So what does it mean when we talk
21 about specific authorization? Well, requiring specific
22 authorization means that you are actually going to have

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1 to prepare an application. The things about 810s is
2 whether it is specific authorization or general
3 authorization, some paperwork is going to be required
4 to DOE, just a matter of whether it is going to be an
5 application, for which the Secretary will sign off for
6 under general authorization. There is going to be
7 reporting to us after the fact. But if there is a
8 specific authorization, you are going to have to
9 prepare an application.

10 It also means that the DOE and certain aspects
11 of DOE will take a look at the application. And it is
12 going to go through an interagency review. It also
13 means that in order for the State Department to make
14 its concurrence, which is required, again, by the
15 statute, host country assurances dealing with non-
16 proliferation aspects of the transfer will be required.
17 And then the Secretary has to sign off on it. And,
18 again, as I have mentioned several times before, this
19 is a non-delegable authority pursuant to another
20 section of the Atomic Energy Act.

21 If it is a generally authorized assistance, it
22 requires reporting only. And we tried to in the SNOPR

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1 lay out much clearer what those reporting requirements
2 are going to be. And in our view, this is really going
3 to be available for most of the foreign nuclear
4 transactions that take place. The idea here is general
5 authorizations make the regulation efficient. And what
6 we are trying to do is put higher walls around the
7 riskier transactions, much akin to what is also going
8 on in the export control reform effort in other parts
9 of the government.

10 So why were the changes needed? And I think a
11 lot of you have seen this slide before.

12 Okay. First of all, there has been no
13 comprehensive update since 1986. In the early 1990s,
14 following the breakup of the Soviet Union, we did make
15 some changes regarding safety, operation safety aspects
16 that were required to help move operational safety
17 forward. And we did a minor change, technical change,
18 to include accelerator-driven plutonium production
19 systems. But there has been no major comprehensive
20 change since 1986.

21 And what has happened since then? Well, a
22 couple of things. The global nuclear market, I think,

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1 as you all recognize, has expanded and evolved. How
2 transactions are done between companies has become much
3 more globalized, become much more complex. And new
4 markets have really started to open up in areas that I
5 don't think in 1986 we would have really thought were
6 viable, but in today's worlds are extremely viable and
7 have great potential. There are new vendors competing
8 with U.S. companies. And there are new technologies
9 being developed; SMRs, for example. In 1986, I don't
10 think we would have thought that the idea of SMRs would
11 have really taken off.

12 So all of that has shown us that the market
13 has changed since the rule was last through major
14 upgrade. And obviously, I think from what we're seeing
15 today, I think a lot of people would agree that the
16 rule needs to evolve to kind of match where the market
17 is going.

18 Also, the world of national security and
19 proliferation has evolved. The revelations from Iraq
20 certainly shocked the world. For example, the Nuclear
21 Suppliers Group adopted its dual use controls because
22 of that. You have seen a lot of revelations have come

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1 out of the Khan network. And what was going on in
2 Libya and Malaysia has shown that proliferation has
3 also evolved and how proliferation has evolved. And so
4 it has resulted in the government thinking about how do
5 we adjust the regulatory standards to meet those
6 proliferation concerns and the new political
7 relationships and the new realities that are moving
8 forward. So all of those things put together, you
9 know, sort of leads us to the conclusion that the rule
10 does need to be adjusted and to be updated.

11 Our fundamental approach has remained
12 unchanged. The Secretary has the discretion to make
13 general authorizations or require specific
14 authorizations. And, again, it is based on the
15 statutory requirements in 57B, which stem from the non-
16 inimicality finding.

17 In making the non-inimicality finding, we
18 maintain in this rule, in this version of the rule,
19 what we had in the NOPR and what is in the current
20 rule, which is we list the criteria by which in the
21 analysis we make these determinations. These include
22 national security considerations, diplomatic

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1 considerations, and trade considerations. The only
2 place where we essentially don't need to make those
3 determinations on inimicality will be for transfers of
4 what we call sensitive nuclear technology enrichment
5 and reprocessing. Because of other aspects of the
6 Atomic Energy Act, we do not have the ability to go
7 ahead and make a general authorization determination.

8 Whenever there is a request for transfer,
9 there are certain government assurances required by
10 those elements of the Atomic Energy Act that make
11 general authorization impossible for us to grant for
12 those technologies to anyone. And so for that, we will
13 always maintain that those require specific
14 authorization.

15 How do we go about making the non-inimicality
16 determination? Well, you know, I think this is going
17 to be the crux of a lot of the questions that we are
18 going to get. How do we make that determination? What
19 information do we get? I think the easiest way by
20 which we can describe it and I think the model that we
21 are advocating as we go forward is really looking at
22 how we do this for the 123 process. And, as I think

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1 most people know, when you do the 123 process -- and I
2 think Dick is going to talk a little bit about it in
3 his slides after mine -- we do what is called an NPAS,
4 non-proliferation assessment statement, which goes up
5 with the actual 123 text to Congress and sort of lays
6 out, "This is what we know about the partner country.
7 This is what we believe, where they are, and various
8 aspects of their nuclear and national security and non-
9 proliferation policies. This is what we know, and this
10 is what we expect." And so we have the NPAS. It is
11 signed by both the Secretary of Energy, the Secretary
12 of State. It is accompanied with the NPAS and the
13 agreement along with a letter from the Nuclear
14 Regulatory Commission. And it's interagency-cleared
15 and cleared through the intelligence community. And so
16 we believe it to be the best standard and the best
17 information we have on making the non-inimicality
18 determination associated with a country.

19 Under the current rule, where we have lists of
20 countries that require specific authorizations, we
21 don't always have that information that is available to
22 us to make that determination. And for us, we had to,

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1 when we looked at the rule, we had to, sit down and
2 make a determination. Does the lack of information
3 mean that the Secretary can make that non-inimicality
4 finding?

5 And especially when we add on top of that the
6 desire, as we mentioned when we did the rollout for the
7 NOPR, that we wanted this new rule to be in line with
8 the spirit of the broader export control reform effort,
9 which is where there would only be positive lists, you
10 know, instead of the negative lists, countries that
11 require a higher standard, we wanted to have a list
12 where we wanted countries to have more expedited
13 treatment, we needed a standard which was
14 nondiscriminatory in its application. And so we looked
15 at the 123 process. And that is what we have advocated
16 in the earlier rule, and that is what we are advocating
17 moving forward now.

18 So what are the goals of the proposed changes?
19 Well, effective threat reduction. At its heart, 57B is
20 a non-proliferation rule. It impacts nuclear trade
21 significantly. We understand that. I think we take
22 that to heart. And I think we want to try and find a

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1 way to balance that with the second bullet, which is
2 effective nuclear trade support.

3 I think it is fair to say part of our broader
4 non-proliferation policy is the fact that we have such
5 a strong commercial nuclear market that essentially can
6 influence nuclear and non-proliferation policy in those
7 countries which we get access to. And so we have to be
8 able to balance the effective threat reduction with the
9 effective nuclear trade support.

10 And the third thing is efficient regulations.
11 Look, we understand this is a bulky regulation when it
12 comes to application today. It is not the smoothest,
13 as we would like. It is probably not the smoothest
14 that you would like as applicants. So we are really
15 trying hard to balance the effective threat reduction
16 with the effective trade support and trying to
17 implement it as efficiently as possible. And so that
18 is what our goal is and what we are trying to do. It
19 is striking this balance. And that is what we think,
20 the direction we are heading, and what we have achieved
21 here with the supplemental rule.

22 So where are we with the status of this?

1 Well, right now, we have the initial notice of proposed
2 rule, which came out in September of 2011. I have gone
3 through what it meant to address them. And we got what
4 we wanted. We said in the webinar we wanted public
5 comments. We got a lot of public comments and a lot of
6 good public comments that we have taken our time, all
7 of us up here and the other elements of the
8 interagency, to look at these public comments and to
9 try and bring together the best ideas from the public
10 with our ideas and how to strike that balance.

11 So now what we have is the supplemental notice
12 of the proposed rulemaking. And I am going to go
13 through those elements now and where we felt that we
14 could be responsive to the comments that we got.

15 So what did we learn from the comments? Well,
16 the first thing we learned was that there were
17 concerns associated with the proposed change to the
18 generally authorized country list from the restricted
19 country list. So, you know, as I described our
20 methodology and our thinking and our broad conceptual
21 ideas behind how we were going to make the inimicality
22 findings or the non-inimicality findings and moving it

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1 from a negative list to a positive list, obviously
2 there were countries and destinations that move from
3 one list to another. And so that was something that we
4 took a hard look at from the comments we received.

5 The other thing was a perceived increase in
6 proposed activities subject to specific authorization.
7 This really stemmed from when we tried to add for the
8 first time the technical scope to the controls in
9 moving this forward. And, as we said during the
10 webinar and we have made in other public fora, that was
11 really based upon a number of things: our multilateral
12 obligations to organizations like Nuclear Suppliers
13 Group, our NPT obligations, and based upon past
14 licensing history and precedent that we have made here
15 at DOE and that others had made here in other similar
16 licensing requirements and that other U.S. agencies or
17 commissions have made in the past. And so we tried to
18 lay that out in the technical scope. And I think a lot
19 of people were surprised when they looked at it because
20 when you go from no technical scope to the technical
21 scope we laid out, there were things on there that
22 people probably didn't think had been licensed before

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1 or were part of the Nuclear Suppliers Group's thinking
2 or where the government had made a determination that
3 those technologies fell under an NPT obligation. So I
4 think that surprised some people, but I will also be
5 honest that there were elements of this that we could
6 have written a lot clearer and that we could have been
7 provided more information on. And so we have gone
8 through and tried to clarify that in the supplemental
9 rule.

10 And the applicability was unclear regarding
11 some of the activities, meaning there were some things
12 and some questions of whether an activity was covered
13 or not covered and we have gone through and tried to do
14 this.

15 The other thing that we heard loud and clear
16 was that the process itself, having nothing to do with
17 the rule but how we do our work here at DOE, was slow,
18 opaque, and unpredictable. I am not sure that I would
19 agree with that characterization, but the message was
20 received. And we knew it before we put the rule out
21 because, as we said during the webinar, we have also
22 been working on how to improve our internal processes

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1 with regards to the rule. So those comments
2 essentially reinforced what we already knew and really
3 helped us to redouble our efforts in that area. And we
4 will get into a little discussion of that as well as we
5 move forward.

6 So the next slide, how the SNOPR process
7 responds to comment, I think from our view, we feel
8 that the supplemental rule is more open, there are
9 better explanations, the proposed destination
10 reclassification was retained with minor changes, and
11 we are going to be talking about how to improve the
12 process a lot better.

13 So let's get into the first and what I think
14 is the major aspect of the initial comments we got and
15 what we did with the supplemental rule. I think, as we
16 have talked about in the past, when we made the switch
17 from the negative to the positive list and then we made
18 the linkage of the positive list to the 123 process,
19 essentially there was a change in countries. We
20 recognized that full up. And we understand that it
21 created or we didn't understand at the time exactly how
22 that was going to impact certain aspects of day-to-day

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1 operations of many U.S. persons or U.S. industries.
2 The comments helped clarify that. But one of the
3 things that it did also tell us was that it reinforced
4 the fact that we did have in our minds the best way to
5 determine the inimicality finding because we really
6 didn't get any comments that stated there was another
7 way to do it. It was more a question about countries
8 moving from one list to another and how it affected
9 certain aspects of, as I said, day-to-day operations.

10 So there was no change proposed from the NOPR
11 to the SNOPR for 117 destinations. Forty-four major
12 nuclear trading partners would remain generally
13 authorized. Seventy-three destinations presenting
14 proliferation issues would continue to require specific
15 authorization. Russia, China, and India would continue
16 to require specific authorization. And I went through
17 the reasons for that during the webinar. And we can
18 revisit that if folks need to in the question and
19 answer period. And certain projects in Mexico and
20 Chile would continue to be authorized. But what we did
21 hear and what we did find were ways to allow some of
22 the projects within Mexico and Chile to be generally

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1 authorized. And those would essentially be those
2 projects that are under project and supply agreements,
3 which essentially makes up most, if not all, of the
4 nuclear aspects and commercial aspects in Mexico and
5 Chile. So I think we found ways to address that.

6 Let's move to the next one. The key basis for
7 proposed classification, as I said, was the 123. So
8 what slips over? So Kazakhstan, Ukraine, UAE would be
9 generally authorized. And these are countries for
10 which we had 123s in place and countries that have
11 dynamic and important nuclear markets. And so they
12 would move from right now requiring the specific
13 authorization of the current rule to being generally
14 authorized.

15 The 77 countries for which our specific
16 authorizations would still be required -- when we went
17 back and looked at it, there's very little or no
18 nuclear trade that's going on. We don't have a 123
19 agreement. So there are really no prospects from a
20 government standpoint that we see where nuclear trade
21 is going to rise to the level of significance to where
22 123 -- and I think probably most importantly, you know,

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1 we don't really have a good sense of what the nuclear
2 policies are of most of these countries, either from a
3 policy of civil nuclear use or their policies on non-
4 proliferation. So that is our thinking.

5 As nuclear programs emerge and as we are
6 negotiating and we put into effect more 123s, the idea
7 is that then we will have a basis to make the non-
8 inimicality findings. And the way that we structured
9 the rule is that you will notice that the list is an
10 appendix. And the reason it is an appendix to the rule
11 is so that way we don't have to go through a rulemaking
12 every time we want to update the list. And the idea is
13 to make it as simple as possible. So that when 123
14 comes into effect, then the Secretary of Energy, with
15 the concurrence of the State Department and consulting
16 with the other agencies, can then go ahead through
17 Federal Register notice and, with a little bit of
18 rulemaking paperwork, be able to add the 123, that
19 country for which we have a 123, to the general
20 authorization list.

21 Okay. Let's move on to the next one. What
22 else does the SNOPIR do? It exempts lawful permanent

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1 resident aliens and protected foreign nationals. This
2 wasn't clear in the existing rule. So what we are
3 saying is if someone is here under a green card or is a
4 PRA or is a protected foreign national, they are to be
5 treated as a U.S. person. And they would not require -
6 - actually, wouldn't be under the scope of the rule at
7 all.

8 SNOPR generally authorizes access to nuclear
9 technology. If foreign nationals are employed at U.S.
10 nuclear facilities if the employee signs a
11 confidentiality agreement is authorized in accordance
12 with NRC standards, which I think Mark is going to talk
13 about later and the employer reports the authorized
14 access to DOE.

15 Where did this come from? This is new from
16 the NOPR to the SNOPR. When we did the country list
17 flip from the bad guy to the good guy and linked it to
18 the 123 finding, 123 determination in the process, one
19 of the comments that we got was, "Hey, although there
20 may not be a lot of significant nuclear exports with
21 some of these countries that flip, there are a lot of
22 foreign nationals that are employed at U.S. nuclear

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1 installations and that these persons are here pursuant
2 to the access requirements of the NRC."

3 When we looked at those comments, we sat down
4 with the NRC and the interagency, and we said, "Is it
5 right? And is it fair? Do we want to essentially
6 double-regulate the same activity? Do we want to
7 regulate, apply 810 over somebody for which the NRC has
8 allowed them to have access to do a certain job at a
9 nuclear installation in the United States?" It didn't
10 seem logical or right to us to be in a position where
11 the NRC says an individual can have access to the
12 facility to do a job, only for the Department of Energy
13 to come in and make the determination potentially that
14 the person cannot do the job while he is there.

15 And so in talking with the interagency and
16 talking with the NRC, the determination was made that
17 the NRC really had jurisdiction over this area and not
18 us since they were making the access determination and
19 we were only making a determination on whether they
20 could actually have access to information from the
21 company so that they could do their job.

22 And so the way we have phrased this in here is

1 if you are essentially hiring a foreign national and
2 you meet all the NRC access requirements, just report
3 it to us. It will be generally authorized, regardless
4 of what country they're from, in moving forward, what
5 country they're from. And so that is essentially going
6 to be an important exception that we were making to the
7 country rules from the public comments we got because
8 we could certainly see the reasoning and the impact
9 that the rule would have behind it. And I think it
10 created a difficult regulatory situation which the
11 government at large could be placing upon U.S.
12 companies.

13 The other thing that we have done in this rule
14 is we have taken a look at the deemed exports or the
15 deemed reexports. And there will be no changes to how
16 we are going to handle that for now. That could change
17 in the future, but right now in the supplemental rule,
18 there are going to be no changes.

19 And I think let's move on to the next slide,
20 Jessica. So the existing rule -- the other thing that
21 we did is that we have tried to make the rule clearer
22 with regards to the technical scope and to the reactor

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1 section. So the existing rule right now talks about
2 production reactors, but we have always implemented it
3 from the very beginning as including all reactors since
4 all reactors produce plutonium.

5 What the SNOPR now does is expressly cover all
6 reactors, but what we did is we clarified the scope
7 within the reactor of how far the rule expands. If you
8 look in the current rule, there's no explanation. So
9 if someone says, "I want to do work here in this part
10 of the plant" or "I want to move technology associated
11 with another part of the plant. Am I in or am I out?"
12 because nuclear plants are fairly large and involve a
13 lot of different kinds of technologies -- so what we
14 have done is we have expressly covered all reactors,
15 but we narrowed the scope or clarified the scope of the
16 reactor technology to be the nuclear island in the
17 primary coolant loop. So everything from the steam
18 generators on into the island is covered by 810.

19 If it is outside the steam generator, then it
20 is Department of Commerce. And I think that now what
21 we have done is we have clarified between Commerce
22 regulations and our regulations exactly what is going

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1 to be the scope of 810 coverage versus Commerce
2 coverage. And I think that this matches up pretty
3 closely to how the NRC also defines the controls for a
4 nuclear reactor, also with the Department of Commerce.
5 So it aligns the three agencies up very nicely.

6 Moving forward, so the next one is operational
7 safety. We currently have some aspects of operational
8 safety in the current rule. We talked about getting
9 rid of it in the first proposed rule. And part of it
10 was -- and I think, as we talked about during the
11 webinar -- that it created a difficult situation
12 because there was no agreed definition of what was
13 operational safety. And, quite frankly, I think we
14 struggled as much as applicants struggled in trying to
15 define what was operational safety versus what was safe
16 operations.

17 Obviously, the comments we got reflected some
18 concern with us doing that, making that change. And
19 then, unfortunately, the accident at Fukushima happened
20 and we started to realize how important the fast track
21 that we had put in place really back in the early 1990s
22 for prodding assistance to former Soviet Union reactors

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1 was going to play in the rule moving forward.

2 And so what we are going to do is we are going
3 to retain a couple of things. We are going to retain
4 the fast track for when there is an imminent
5 radiological hazard. Okay? And, quite frankly, the
6 best example I can think of right now is Fukushima. If
7 there's an imminent radiological hazard, you pick up
8 the phone, what the rule, current rule, says, call us.
9 We'll talk about it for a couple of minutes. And then
10 if we all agree that that is the case, the staff will
11 inform the Secretary and then you will be approved to
12 go ahead and do what you need to do to fix that
13 problem, to address the concern. And then we will
14 worry about the paperwork later. That is going to be
15 retained.

16 We have also added a definition of operational
17 safety to try and establish a standard by which
18 operational safety work can go forward. I think from
19 our standpoint, it is the best definition we could come
20 up with within Department of Energy, with the Office of
21 Nuclear Energy, and working with the interagency. It
22 may be something that in the future again, we may look

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1 at moving forward, but that definition is important for
2 us from a regulatory standpoint. And why is it
3 important for us from a regulatory standpoint? Because
4 we are also adding in two new elements into the
5 regulation regarding operational safety.

6 First is operational safety to foreign
7 reactors, which are under IAEA safeguards. And there,
8 using this definition that we have, we are saying, hey,
9 if it is something that you are providing to a foreign
10 reactor that is safeguarded, you can go ahead and use
11 the operational safety definition, but you have to
12 check with us first. You can use it as a way to
13 generally authorize your transfers, but there is a 45-
14 day period for which we have to respond. Given that
15 the current specific authorization process is supposed
16 to be within 90 days, we try to do it within 90 days,
17 this means in half the time, we will get back to you.
18 And we will tell you whether your activity falls within
19 the scope, within the technical scope of that
20 definition of operational safety.

21 The other thing that we are doing within the
22 reg, which is foreign assistance on operational safety

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1 aspects to U.S. reactors, one of the things that we
2 were seeing more and more of and we expect to see a lot
3 more of following Fukushima is a lot more of this sort
4 of peer review, international peer review, of safety
5 standards within reactors and nuclear facilities. And
6 when certain entities like INPO or WANO, utilities want
7 them to come and do this peer review, we have come to
8 the conclusion that the rule should not get in the way
9 of that. And so that can also be generally authorized
10 underneath the new rule, that kind of operational
11 safety support. And, again, it's 45 days. Just let us
12 know within 45 days. We will confirm that it is
13 happening. And then it is just a reporting requirement
14 as if it would have been generally authorized. So
15 those are two new areas associated with operational
16 safety. Okay.

17 So other proposed changes. Well, we clarified
18 that if you have a Commerce and State-approved export,
19 you would be exempt from the Part 810 in order to avoid
20 duplication of regulation. So if Steve or the State
21 Department has granted you a license on specific
22 nuclear assistance or nuclear technology, you would be

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1 exempt.

2 For the most part, it shouldn't be a problem
3 with the Nuclear Regulatory Commission since they do
4 the hardware in nuclear materials and we do the
5 technology and the assistance. But we wanted to
6 clarify that from the Commerce and State.

7 Public information. We worked hard with the
8 interagency to clarify and to ensure that there is
9 consistency with the public information definitions
10 that we have of what is in the public domain and what
11 isn't so that, you know, obviously companies and
12 individuals that required multiple licenses were
13 looking and using the same terminology, the same litmus
14 test, the same standards with regards to essentially
15 the same information.

16 Activities with remote connection to special
17 nuclear material. We have tried to clarify that. So
18 there was some concern that we mentioned mining in the
19 first revision in the NOPR. We have clarified that by
20 not including it in the supplemental, that it is not
21 going to be covered.

22 Medical isotope production. We have looked at

1 medical isotopes. When it doesn't involve special
2 nuclear materials, it would not be covered by the
3 supplemental rule.

4 Fusion work, obviously, with the big science
5 project such as Iter and others. There were questions
6 about what part of the fusion science world was going
7 to be covered, and we have clarified that as well and
8 other back-ended activities related to medical
9 isotopes, such as the production of moly-99 for medical
10 isotope use. There are aspects and certain techniques
11 of the moly-99 recovery process that would be not
12 covered by the 810 supplemental rule.

13 And then, finally, activities carried out by
14 IAEA personnel would be generally authorized. So we
15 have clarified where that was because there was a
16 question internally within the U.S. government and from
17 people on the outside who were being sponsored to go to
18 work at the IAEA by the U.S government because
19 obviously supporting the IAEA is something we want to
20 do.

21 So now that takes us through very briefly the
22 changes, some of the major changes, that we made to the

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1 rule. So now I want to talk a little bit about the
2 process issue because it was something that was
3 highlighted during the public comment period.

4 We understand the point that the specific
5 authorization process takes a bit of time. We
6 understand that it requires the Secretary of Energy,
7 cabinet-level official, to sign off on all the specific
8 authorizations. And we understand that the process
9 needs to be more transparent, predictable, and
10 efficient. One of the things I think that those of you
11 who work directly with us know from time to time, we
12 try to do our best to ensure that we can implement this
13 in a way, implement the rule in a way, that does not
14 place companies at disadvantages, competitive
15 disadvantage or any other disadvantage. That is our
16 goal to try and do that.

17 At times, some of the circumstances, I think,
18 as some of you have heard me and others say, those
19 circumstances are out of our control. We try our best
20 to influence all aspects of the 810 process, but
21 sometimes we're not always successful in doing so. So
22 we try our best to do this. But let me take you

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1 through a little bit of the current specific
2 authorization process. And then we will get into some
3 of the things that we are doing to try and improve the
4 process in conjunction with putting out the new rule.

5 So this is the current process and something,
6 a slide, that I have used before. And, as you can see,
7 we essentially break the process up into three stages.
8 The first stage is the initial review, meaning when we
9 get the application that comes in from an applicant, we
10 take a look at it. And if it is something that we
11 believe within my office, something that can go
12 forward, meaning it meets all the requirements of the
13 regulation, we then start the analysis. And what the
14 analysis is is the non-inimicality finding. And it is
15 in the supplemental. It is going to be in 810.9;
16 whereas, there are the 10 elements that we take a look
17 at with regard to how we take a look at it. And,
18 again, this is where the Secretary -- we are making a
19 judgment in making a recommendation to the Secretary
20 that the proposed transfer is not inimical to the
21 common interests of the United States. So it includes
22 what do we know about the country, what do we know

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1 about the activity, what do we know about the
2 technology, and what do we know about the commercial
3 market and the potential loss of trade if it's not
4 approved moving forward.

5 That then goes through DOE, through NNSA staff
6 review. The DOE Office of Nuclear Energy takes a look
7 at it. And then it goes through our legal reviews. We
8 then send it to the interagency, which is really the
9 second stage. And there it goes through State,
10 Commerce, NRC, and Department of Defense review. We
11 give them 30 days to take a look at the license. And
12 this is in line with the 30 days, which you will see
13 also in the Department of Commerce and the State
14 Department ITAR regulations, 30-day review for the
15 interagency. At the same time, State Department will
16 then request formal assurances from the host
17 government.

18 Once we have everyone's feedback from the
19 interagency and as long as nobody has said, "No. This
20 is a bad idea" or raised any significant concerns and
21 we have the assurances, we then repackage it, we draft
22 the license approval recommendation to the Secretary.

1 And it then goes through because it is a package it is
2 a package to the Secretary the review internally within
3 NNSA and DOE. And then it goes to the Secretary for
4 approval. That is the process.

5 And I think, as many of you know, part of the
6 problem there isn't us preparing the analysis. If we
7 understand the application and all the information is
8 there, we can prepare the analysis pretty quickly. It
9 is not the review. Agencies, we do a pretty good job
10 of doing the review. The long-term intent is the
11 assurance process. And, again, a lot of that is
12 outside of our reach. We do our best with the State
13 Department to try and get foreign governments to move
14 forward. We have come up with a few ideas here
15 recently in working with some of the countries for
16 which we have the most challenges in getting assurances
17 from. And we are working to develop new fast track
18 approaches with some of those countries on the
19 assurances. It is not part of the supplemental rule,
20 but it is something that is important for us to get
21 right because in our view, we are not going through the
22 effort of the supplemental rule to have the process

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1 still be bogged down by the same problems. So we want
2 to go through and do this.

3 So next slide. But we can find time and save
4 some time on our internal processes. Even though we do
5 a good job, we know we can do better. And so what we
6 have tried to do is really piggyback upon a broader
7 effort that is going on here within NNSA, which was
8 announced in this very auditorium, which was that NNSA
9 as an organization is going to seek to become ISO-9001-
10 compliant. And so what we want to do is we want to
11 actually take the 810 process and not only become ISO-
12 9001-compliant. We actually want to take it to the
13 point where we can get certified.

14 And so what we have done is we have taken a
15 six-sigma approach that we have obviously borrowed from
16 GE. And my goal was to hire Jack Donaghy from 30 Rock
17 to take us through this, but he wasn't available. So
18 we have settled with another expert in this process to
19 come and help us do this.

20 We are in the phase within the six-sigma
21 process of talking to the customer through the
22 interview process, trying to understand where we have

1 duplication, where we have gaps, what the expectations
2 are with regards to the 810 process moving forward.
3 Then what we are going to do is then actually go
4 through the entire six-sigma process, which should get
5 us to the point where we can then go through the ISO-
6 9001 certification process.

7 I think what we are going to find is that
8 there are overlaps, there is time to be saved, and that
9 there are places that we can find efficiencies and
10 streamline. Unfortunately, I don't have a lot of the
11 details because what I don't want to do is end up in
12 the typical government program analyst kind of position
13 where I pretend that I know the answer before we really
14 do get the answer. And I have left the team alone to
15 be able to come back with the raw, unvarnished truth
16 and the recommendations to us on where we are going
17 wrong and where we can do better. Okay?

18 So other ideas that we are looking at on the
19 table and some stuff, ideas, that have come forward to
20 us through the public comment period and just that we
21 have heard from others on the side are that we are
22 going to be publishing a Part 810 guide, including

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1 advisory opinions. So as we give companies advisory
2 opinions on certain technology questions, certain
3 country questions, certain business relationship
4 questions, we will sanitize those when we make what we
5 believe are important interpretations for how we are
6 looking at the rule, how we are looking at certain
7 things. And we are going to publish those as advisory
8 opinions.

9 We are working to reduce the response times
10 for foreign government assurances. I want to be
11 careful what I say here because we are actively
12 negotiating with a few governments right now on how to
13 shorten those response times. We have our ideas. They
14 have some ideas. I will be taking a trip with State
15 Department colleagues in the very near future to a very
16 important country which we have a significant problem
17 with. They seem motivated and we are motivated to get
18 this fixed and to reduce those response times. So we
19 are working on that. Although that will not be part of
20 the six-sigma review, it is a very important part of
21 the work that we see moving forward.

22 We are going to develop and implement an e-

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1 licensing system. I talked about it a little bit at
2 the webinar, that we had the question in front of us.
3 We didn't know whether the cost was going to be worth
4 it given the limited number of 810 specific
5 authorizations that we do. But given the fact that we
6 want to publish a Part 810 guide, that we want to
7 publish advisory opinions, we decided that it was
8 probably worth it to go ahead and design and implement
9 an e-licensing system, which would be essentially one-
10 stop shopping. It would also get us out of the paper
11 chase that we go through and would hopefully
12 standardize a lot of the application process for our
13 applicants. It would also help us implement the fast
14 track procedures for the authorization of activities
15 that present the lowest proliferation risk. And those
16 are the ones that I talked about in the operational
17 safety and some of the deemed export aspects that we're
18 going to be creating fast track avenues for within the
19 supplemental rule and what is going to reduce the time
20 for internal DOE and interagency reviews because no
21 longer can people say, "I can't find that piece of
22 paper" because they are going to be able to log right

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1 into the system and be able to have all of the
2 information that is there from the applicant, from us,
3 from the other agencies, and hopefully will expedite
4 moving the whole process forward.

5 We are talking with important stakeholders
6 regarding the e-licensing system and getting more ideas
7 out there. It is probably not going to be a sort of
8 completed project when we first implemented. Our hope
9 is to implement it in various phases. And our goal is
10 to have the first phase of the e-licensing system with
11 some of these things like the Part 810 guide and the
12 advisory opinions up and running at about the same time
13 that we would issue a final rule. So that our goal is
14 that we would essentially -- when the time comes, we
15 are going to basically turn the page and basically drag
16 the 810 process into the Twenty-First Century in
17 hopefully one flick of the switch.

18 And the last slide, Jessica. So the
19 conclusion. This is what the supplemental rule is.
20 This is where we are heading with regards to the
21 process improvement. Our goal is to, as I said,
22 facilitate nuclear trade. We are hoping to update and

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1 modernize, be more open, effective, and efficient, but
2 we can't do so at a cost where we compromise our
3 proliferation controls. It is this balance that we are
4 trying to strike. We appreciate the work and effort
5 that the public has gone into providing comments on
6 this. And to us, these are the comments. These are
7 important in making sure that we get the balance right
8 and moving forward.

9 So, with that, I think I have used up more
10 than my time and Joyce's unofficial time. So let me
11 turn it over now to Dick.

12 MR. STRATFORD: Okay. I am Dick Stratford.
13 And I had the State Department office that handles
14 pretty much every aspect of peaceful nuclear affairs.
15 We handle the Nuclear Suppliers Group, the Zangger
16 Committee. We're the ones who negotiate the 123
17 agreements, which is a growth industry these days since
18 I am now up to 12 agreements that we either have to
19 finish negotiating or extend them. And three more
20 countries have called up and said, "We are interested
21 in a 123, too." I think we're probably going to wind
22 up doing it certainly with two out of the three. The

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1 third one I'm not so sure they are really going to have
2 a nuclear program.

3 We are also responsible for the State
4 Department's review of Part 810 requests. Now, we have
5 a somewhat limited role in 810s, but we are on the
6 critical path because, whereas, DOE has to consult with
7 other agencies. Before they put a recommendation to
8 the Secretary, they need State Department concurrence
9 in the case of specific authorizations of nuclear
10 technology transfers. Now, how does that work? DOE
11 sends me a letter setting out what the application is
12 asking for, what their analysis is, and what they
13 propose to do with it, which in most cases is to
14 approve it. But before they do that, they need certain
15 assurances from the foreign government.

16 And let's go to the next slide. Foreign
17 government assurances have been long time required.
18 And what we need is we need to know that it is for
19 peaceful uses, it is not for explosive devices, not for
20 any military purpose, and no retransfer without written
21 consent.

22 So in a period of usually no more than three

1 days, the licensing officer in my office prepares a
2 cable, which goes out to the country concerned, which
3 says, "The following transaction or transfer to you of
4 nuclear technology is under consideration by the
5 Secretary of Energy. And in order to allow this to
6 happen, we need certain assurances from you about what
7 will or will not happen to that technology.

8 Now, some have said, "Well, if you have a 123
9 agreement, it is almost a foregone conclusion, isn't
10 it?" Yes. Generally speaking, it is. And, even if we
11 don't have a 123 agreement, you can still make a Part
12 810 technology transfer. We just might look at it a
13 little more closely.

14 Now, some have said, "Well, you have an
15 agreement with China, India, and Russia. Why don't you
16 just go general authorization?" Well, the answer is
17 obvious, which is they each have a nuclear explosive
18 program. And we don't have a track with a nuclear
19 explosive program.

20 So if someone says, "I am going to go do
21 something in Russia," if it is on the peaceful side of
22 the equation, the answer is almost certainly yes. If

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1 it is tied up with the nuclear side, the answer is
2 probably no, but there is a middle ground. Like, for
3 example, there was a time with India, where we never
4 would have approved transfers to BARC in India. It was
5 affiliated with the weapons establishment.

6 But then as we got further along what we used
7 to call the glide path -- this is before the 2005
8 announcement -- we lightened up a little bit. We began
9 to distinguish between parts of BARC that were clearly
10 weapons-related and parts of BARC that were clearly
11 civilian in their focus, just like Los Alamos, for
12 example. It is a weapons lab, but there is all kinds
13 of technology being developed that is not just for
14 weapons but for peaceful purposes.

15 So if you say BARC today, we would look at it
16 and say, "Okay. What part of BARC? And what are the
17 dangers that the technology will be diverted to a
18 weapons use?"

19 And then we make a judgment. And our judgment
20 goes back to DOE, which says, "Yes. We don't have a
21 problem with that" or "This makes us very nervous.
22 Let's talk about it before we go out there and ask for

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1 assurances."

2 How long do assurances take? Some countries
3 get back to us fairly quickly, in a matter of a couple
4 of days. Some have been known to go for 12 months
5 without an answer. In one case, the applicant was
6 getting somewhat cranky about the fact that they
7 weren't allowed to go ahead with their transaction.
8 And I said, "Look, tell the science officer in capital
9 to please go in and see the relevant agency and ask
10 them what the holdup is."

11 So science officer went in and asked. And the
12 answer was, "Well, the holdup is I have no idea who you
13 are talking about, never heard of this company before
14 in my life, wouldn't know where to find them."

15 So I went back and said, "All right. Call the
16 applicant. Tell the applicant to call his client and
17 tell the client to make himself heard in the relevant
18 agency."

19 That worked. Client contacted the agency,
20 said, "This is who I am. And would you kindly give the
21 assurances?" Then they finally came through.

22 Now, as I said, some countries are worse off

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1 than others in terms of replying promptly, but we are
2 going to try in some cases to fix that in a generic
3 sense. And, as Rich said, he's going out probably
4 sometime in late August, early September to a
5 particular country to try to speed things up. And I am
6 sending along one of my very best people to see if we
7 can make that happen.

8 Next slide. Yes, tech transfers are important
9 to the industry. That is why we try to speed up the
10 assurance requests. And, oh, by the way, when the
11 assurance request comes back with the assurances, how
12 long does it take State to get back to DOE? Usually
13 two to three days. It's two to three days on the way
14 in before the cable goes out and it's two to three days
15 after the cable comes back that I sign the letter back
16 to DOE that says, "Yes, we concur. Please go ahead."
17 That is self-explanatory.

18 Next slide. And there isn't one. Okay. So
19 let me stop there. Bottom line is we are on the
20 critical path. We don't take that much time to respond
21 to the process. And I think we can do a little better
22 in terms of nudging people who are not responsive as

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1 quickly as we would hope they would be.

2 I will stop there.

3 MS. STRANGIS: Why don't we take this time to
4 take a ten-minute break? I think we have several
5 people that will be by the doors and can escort groups
6 of people to the restrooms. And we will start back
7 here at around 2:20.

8 (Whereupon, there was a brief recess.)

9 MS. STRANGIS: If everyone can take their
10 seats, we are going to start back again, I think, with
11 Brooke. Right? Brooke?

12 MS. SMITH: Thank you. So good afternoon. My
13 name is Brooke Smith, and I am going to talk about NRC
14 export controls found in 10 CFR Part 110. And then I
15 am going to turn it over to Mr. Mark Resner, who works
16 in our Office of Nuclear Security and Incident
17 Response, to talk to you a little bit about our
18 security requirements and regulations regarding
19 unauthorized site access, which are tied to the general
20 authorization for foreign nations that Rich had talked
21 about, also known as the deemed exports.

22 So briefly, I am just going to go through Part

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1 110. I normally give a Part 110 101, but this is going
2 to be a little more high level than that and just start
3 with like the legal basis. It's the same for Part 810,
4 different sections, but it's the Atomic Energy Act of
5 1954, as amended, or what gives NRC authority to
6 regulate exports. In our case, it is of nuclear
7 equipment and materials, not the technology. However,
8 I will get into it a little later. If you do have an
9 export license from the NRC, the technology that goes
10 along with what is authorized in that license does not
11 need a separate Part 810 authorization. And then the
12 Nuclear Non-Proliferation Act of 1978 and then other
13 bilateral and multilateral obligations are incorporated
14 into our Part 110 regulations.

15 Next slide. So I am not going to read this to
16 you, but NRC actually has jurisdiction for exports as
17 well as imports, though imports are mostly authorized
18 through the general license similar to the general
19 authorization that you find in Part 810. So we would
20 issue licenses for complete reactors, the major
21 components of a reactor, different materials, nuclear
22 materials, and radioactive materials, as well as waste.

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1 So this is a diagram of a typical pressurized
2 water reactor and a typical boiling water reactor. And
3 I just use this here to illustrate what NRC's Part 110
4 regulations, the scope. It doesn't cover everything
5 that you would find at a nuclear power reactor. It
6 would be consistent with Part 810 that Rich discussed,
7 the nuclear island, and the primary coolant systems.
8 And items would have to be especially designed or
9 prepared equipment.

10 Next slide. Appendix A to Part 110 provides
11 an illustrative list of reactor equipment that falls
12 under NRC's export licensing jurisdiction. And we have
13 essentially what is a definition of a reactor at the
14 beginning of that appendix. And that language that you
15 see up on the screen are items within or attached
16 directly to the reactor vessel: equipment which
17 controls the level of power in the core and components
18 which normally contain or come into direct contact with
19 or control the primary coolant of the reactor core.
20 That kind of gives us the scope of what a reactor is
21 for purposes of NRC export controls. And that comes
22 actually directly from the NSG, the Nuclear Suppliers

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1 Group, definition of nuclear reactor.

2 So the next slide is a list. Appendix A, as I
3 mentioned, is illustrative. However, the first four
4 components on that list we would license as major
5 components. And they apply the same licensing criteria
6 as if you were shipping a complete reactor. And so
7 that is the reactor pressure vessel, the online reactor
8 fuel charging and discharging machines, complete
9 control rod drive system, and reactor primary coolant
10 pumps.

11 The next slide lists the minor reactor
12 equipment. And this is derived from the Nuclear
13 Suppliers Group control list as well, the Part 1 list.
14 And I want to highlight the very last bullet there,
15 "Any other component especially designed or prepared
16 for use in a nuclear reactor," any of the components
17 that are part of the system or items described in
18 Appendix A. So I just bring this up because one of the
19 things that Rich has done within the scope of Part 810
20 is make it clear that Part 810 is also consistent with
21 the control list derived from the Nuclear Suppliers
22 Group.

1 One thing I would like to point out with NRC's
2 jurisdiction is while these are illustrative, we can
3 make case-by-case determinations based on the
4 information provided to us by potential applicants as
5 long as it is consistent with the concepts, you know,
6 the scope of what we control, the principle of
7 especially designed or prepared for, and also
8 consistent with section 109B of the Atomic Energy Act
9 for these minor reactor components and equipment.

10 Next slide. So we also like Part 810 except
11 for we have not the technology but the equipment and
12 components. We would have export licensing
13 jurisdiction over the fuel cycle facilities and then
14 the especially designed or prepared components for
15 those facilities. So this is just a diagram
16 illustrating the fuel cycle.

17 And in Part 810 -- I think it is 810.2, Rich,
18 lists the scope? -- there is a reference to the NRC
19 appendices in there. And those again are derived from
20 the NSG control list. And these again provide an
21 illustrative list of what would fall under NRC's export
22 licensing jurisdiction.

1 And, just briefly, outside of the scope of
2 Part 810, NRC also regulates for export control
3 purposes radioactive materials. It is typically what
4 you would see for medical and industrial use and that
5 are found in a device or sealed source.

6 So Dick had mentioned Department of State has
7 a concurring role in Part 810 review process. We have
8 a consultative role. And that is actually found
9 directly in 57B. So any such determinations by the
10 Secretary of Energy shall be made only with the
11 concurrence of the Department of State after
12 consultation with the Nuclear Regulatory Commission.
13 So we have a very close working relationship with DOE,
14 NNSA. And, with rare exception, we are able to provide
15 our views and input within that 30-day time period that
16 Rich and his staff request views from the NRC in.
17 Usually we are able to just simply say we have no
18 objection to this proposal. Any questions or concerns
19 we have we work closely with the Part 810 staff and
20 usually have those answered pretty quickly or provide
21 our input and receive response. So it is a very
22 collaborative process. And I have been doing it for

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1 eight years. And we have, with rare exception, always
2 been able to work very well together and meet that 30-
3 day deadline.

4 So before I turn it over to Mark to talk about
5 NRC's security requirements and unauthorized site
6 access regulations, I just wanted to provide the
7 transition. Rich had talked about the deemed export.
8 And that is found in 10 CFR in the SNOBR, in the
9 proposed section, 10 CFR 810.6(b), where it talks about
10 transfers of technology to a citizen or national of a
11 country or territory not listed in the appendix to Part
12 810 and working at an NRC-licensed facility. So Mark
13 is going to go into detail about that program and how
14 it is implemented at our U.S. NRC-regulated facilities.

15 Thank you.

16 MR. RESNER: Good afternoon. I'm Mark Resner,
17 the Access Authorization Program Coordinator for NRC.
18 Our program covers 104 nuclear power plants throughout
19 the continental United States. The objective of our
20 program is to provide high assurance -- let me
21 emphasize high assurance -- that people are trustworthy
22 and reliable so that they will not commit radiological

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1 sabotage or threaten the public health and safety or
2 the common defense.

3 We use a defense-in-depth strategy at the
4 plants. It's not only guards, gates, and guns, but it
5 is also other programs that we incorporate to that that
6 are not visible programs.

7 At most plants, although they have different
8 footprints, generally the outer ring or the outermost
9 ring is called the owner-controlled area. That would
10 be parking lots, admin. Facilities. As you proceed
11 inward, the requirements to go further into the plant
12 are obviously more stringent. The second ring is the
13 protected area, what we call the protected area. And
14 those are areas that could have strategic targets
15 within those sites. And then the innermost controlled
16 area, which is the vital areas, which would be the
17 control room and other more serious, more sensitive
18 areas.

19 When you enter the plant, there are armed
20 guards, gates, and guns. There are armed security
21 guards. Employees are badged. For those employees who
22 have been granted access, unescorted access, to get

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1 into the protected area, not only do they have the
2 badge, but they have to use the hand geometry in some
3 of the cases to identify who they are to get into their
4 protected area. Some sites have iris scanners. And,
5 as you go into the protected area, there are explosive
6 sniffers, no cameras, no computers.

7 In combination with these guards, gates, and
8 guns, we have a fitness-for-duty program, which is drug
9 and alcohol. We have a behavior observation program.
10 And we have an insider mitigation program. And all of
11 these programs integrate together.

12 Can we go to the next slide? This kind of
13 illustrates the basic footprint of the sites to give
14 you an idea.

15 Next slide, please. There are three types of
16 access. Generally there are two main types:
17 unescorted access. Then there is escorted access. And
18 then we have a category that's called unescorted access
19 authorization. With unescorted access, you are
20 required to go through a criminal history program,
21 fingerprinting, which I will get into the next slide,
22 credit history, employment history, references,

1 credibility checks. In addition, you are required to
2 undergo plant access training. You have to score at
3 least an 80 percentile on that test. For the
4 unescorted access, you have to successfully pass the
5 drug and alcohol test. You are entered into a random
6 drug-testing pool.

7 For the escorted access -- and the next slide,
8 please -- the elements for unescorted, the first thing
9 that is done is the individual comes to the site. They
10 are provided a consent and advisement form. It lets
11 them know that your name is going to be checked against
12 these databases and you are going to have a criminal
13 history check. Essentially, they sign it and give us
14 our permission. If they don't, they don't get access
15 to the plant.

16 There is a five-page personal history
17 questionnaire, which includes foreign countries that
18 you have traveled to, much like the government SF-86
19 forms; verification of sure identity, which is done
20 through biometric; employment history evaluation -- if
21 there's no employment, if it's been education, then
22 they have to verify that through the schools -- credit

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1 history check; character and reputation evaluations;
2 criminal history review; and psych assessment. The
3 psych assessment has to be done by a professional
4 psychologist.

5 The criminal history review, each plant
6 fingerprints the people. It is sent in to the NRC.
7 The NRC then sends those prints to the FBI Criminal
8 Justice Information System. In turn, the FBI through
9 law and statutory approval, provides the data back to
10 us. We then send that back to the licensee.

11 The licensee reviewing official takes all of
12 this information together with the criminal history,
13 the credit checks, makes an evaluation, a determination
14 of whether that individual is trustworthy and reliable
15 and then granted unescorted access.

16 For escorted access, there are procedures.
17 The plant has procedures. There is a visitor control
18 register, which they have to be entered into prior to
19 entering a plant or coming to the plant; confirmation
20 of the visitor's identity. Whether or not they have
21 been denied access at another plant, that is checked;
22 visitor badges; escort training. The escorts have to

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1 be trained in what the individual will be doing,
2 working on, what they are doing at the plant. The
3 escorts have to be in constant communication with
4 security, armed security.

5 And, if I may back up for just a minute, our
6 regulations, what -- we regulate the NRC licensees
7 through 10 CFR, Code of Federal Regulations. In
8 particular, for access authorization, you will see in
9 the next couple of slides, it is primarily done under
10 10 CFR 73.56. If somebody has been granted unescorted
11 access and it is within a 365-day period, they can go
12 to another site. And the elements are on the left, the
13 consent and advisement once again, the PHQ, the
14 personal history questionnaire; verification of true
15 identity; and the employment history evaluation; if it
16 is within 30 days, consent and advisement, personal
17 history questionnaire, verification of true identity.

18 Next slide, please. Our regulations are
19 codified in 73.55, which is the physical security
20 requirements, which are also tied to 73.56. Fifty-
21 seven has to do with the criminal history program. And
22 Part 26 is fitness for duty. That's drug and alcohol.

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1 In 2010, a new rule was promulgated that the licensees
2 had to implement in March. It provided enhancements to
3 psychological assessments. It had to be done by a
4 professional psychologist, requires information sharing
5 between reactor licensees. And what that is, we
6 require that they have a system that anybody who has
7 been granted access or denied access has to be entered
8 into a system. The licensees currently use something
9 called the PADS. It is Personnel Access Database
10 System. We don't dictate which system they use, only
11 that all licensees have to have access to that. So,
12 going back, if a visitor shows up or anybody shows up,
13 that is one of the checks they do is go in there. And
14 have they ever been denied, it will be flagged within
15 PADS.

16 We expanded our behavior observation
17 requirements. We have annual supervisor reviews of the
18 employees. Recently -- well, in 2010, there was
19 something that occurred. An individual became
20 radicalized. It was in the media. He had worked at
21 five different plants, essentially was flying below the
22 radar. So what we did, the behavior observation

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1 program, which I mentioned earlier, we worked with the
2 NCTC to have them review that, the Radicalization Unit
3 over there, particularly with things that would
4 identify people that potentially are becoming
5 radicalized. So that program, the behavior observation
6 program, is currently being -- those upgrades are
7 currently being incorporated into that program.

8 The reinvestigation of criminal history and
9 credit history records for all individuals with
10 unescorted access, at the plant, there are groups of
11 people who have significant knowledge of the
12 safeguards, control room, the guards. We call it the
13 critical group. Their reinvestigation period is more
14 frequent. It is every three years. And then we have
15 the normal population that is not the critical group.
16 And their reinvestigation period is longer. It is not
17 as frequent.

18 Next slide, please. We regulate through 10
19 CFR regulations, but we also provide guidance to the
20 licensees through what we call reg guides, 566, 567
21 insider mitigation. The minimum IMP, insider
22 mitigation, elements are provided, security

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1 determination; in other words, a criminal history,
2 background checks; number two, initial and random
3 substance abuse testing; three, psychological
4 assessments. And during the psych assessments, too, if
5 anything is detected, they can be referred to a medical
6 professional for further review, annual supervisor
7 review, and periodic reinvestigations.

8 The guidance that governs the access
9 authorization program is what we call NEI0301. We
10 worked in combination with the Nuclear Energy
11 Institute. And they prepare the guidance based on our
12 regulations, what the plants have to do. And we
13 endorse that guidance. The plants then commit to that
14 guidance in their physical security plants. And it
15 actually becomes a condition of their license that NRC
16 issues to them. So they're bound by that.

17 Next slide, please. NEI0304 again is the
18 behavior observation. And we are currently upgrading
19 the training on that. And essentially what it boils
20 down to, to put it in simple words, if you see
21 something, say something. You get a diverse population
22 at the plants. You have nuclear engineers, the

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1 laborers. And, you know, some people may feel that
2 they don't want to rat out a coworker, a fellow laborer
3 or something. But we make it very clear and the
4 licensees make it very clear that they are required to.
5 If you see something, say something.

6 All of these programs, the fitness for duty,
7 the behavior observation, insider mitigation, are all
8 designed to work together. On the insider mitigation,
9 the denial, as I said earlier, as you proceed inward
10 into the plant, it becomes more stringent. The
11 requirements, to get into a vital area within the
12 plant, one of the requirements is a 31-day vital area
13 access. In other words, the supervisor has to sign off
14 on anybody who is getting access to a vital area and
15 provide a reason why they need that continued access to
16 that area or what they are going to be doing. And that
17 has to be done every 31 days.

18 Self-disclosure. You are required, anybody
19 who is arrested once they are granted unescorted access
20 and even before, when they are making application, they
21 have to make a self-disclosure if they have ever been
22 arrested for anything or charged, formally charged.

1 In 2011, we were always looking to enhance our
2 program. We noticed a slight increase in the failure
3 to disclose. You might have a worker go out who has
4 been granted unescorted access, gets busted for a DUI,
5 comes back to the plant, doesn't want to lose their
6 job. So they don't report that they have been
7 arrested. And we are working with the FBI. Next
8 Generation of CJIS right now, they have a program that
9 is called Rap Back. And we are going to be included in
10 that pilot program. We have a draft MOA, memorandum of
11 agreement, which if someone is arrested and is put into
12 the NCI system, it will immediately notify us. And we
13 will, in turn, notify the licensee that this individual
14 should not be allowed back on site. And so it should
15 provide us a good enhancement about failures to report.

16 Next slide, please. This is just a pictorial,
17 the initial background criminal history check that is
18 required, insider mitigation, behavior observation,
19 fitness for duty. It is all aimed at assuring
20 trustworthiness and reliability.

21 And bounding all of that is we have NRC
22 inspection process. What the licensee is required to

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1 do, we have NRC inspectors who go out on a regular
2 basis to inspect the programs and make sure that what
3 they are required to do by regulations, that they are,
4 in fact, doing it. And with respect to the inspection
5 program, if they find there could be civil penalties,
6 there could be a notice of violation. And if it's
7 egregious, it could end up being pursuing a criminal
8 prosecution of it.

9 Next slide, please. In addition to the other
10 programs, in 2002, under Chairman Meserve, we developed
11 an MOU with the Terrorist Screening Center. Everybody
12 that is granted unescorted access or denied, they are
13 entered in the PADS on a monthly basis. We take all
14 those names with a 12-month retrospective look. And
15 that information is provided to the FBI Terrorist
16 Screening Center to determine whether it is a person of
17 interest on that list. And if there is, then we have
18 procedures on how to handle it.

19 Right now, again, as I said, we are always
20 looking to the future and trying to enhance the
21 program. The biometric identity of individuals is
22 paramount to us. And anybody can make up a document,

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1 provide it.

2 So we are working with US VISIT. And also we
3 have a draft MOU with Department of Defense Biometrics
4 Identity Agency. That will give us -- somebody who is
5 arrested in the United States may not be in an FBI
6 database, but they may show up in the AVIS, which is
7 the DOD. They have supporting partner agreements with
8 foreign countries and anywhere that they make
9 collections, anywhere that there is a military base.

10 And that's it.

11 MR. CLAGETT: I think in the whole 810 review
12 process, we work together as an interagency team to try
13 to do away with as much overlap as possible to make
14 clear which agencies had jurisdiction and to have a
15 somewhat parallel structure in our processes and
16 reviews when it was feasible and possible. And this
17 chart was just put out by our Commerce International
18 Trade Administration. It is a very rough overview as
19 to who has jurisdiction in the nuclear field. When you
20 talk about nuclear power, what does Commerce have
21 jurisdiction? It is basically everything that no one
22 else either has or wants. It is not the glorious

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1 reactor, which is special nuclear material technology.
2 It's turbines and generators. You know, it's health
3 and safety equipment, general infrastructure, materials
4 and manufacturing. And the good thing about it as far
5 as nuclear power, the vast majority of those items that
6 are in a nuclear power plant that Commerce controls
7 have very limited licensing requirements.

8 Commerce also has a part, as Rich mentioned,
9 in the NSG, Nuclear Suppliers Group. We administrate
10 the dual-use regime. That is, those have both a
11 nuclear and a non-nuclear end use. And Commerce
12 licenses both technology as well as hardware. Many
13 things on the nuclear suppliers dual-user list are more
14 aimed at an enrichment-type end use or weapons end use.
15 There aren't that many unique nuclear power things
16 except for maybe zirconium material, which is used in
17 tubes and reactors and a few other materials. Most
18 things have a little bit more of a tint towards an
19 enrichment concern or weapons concern.

20 Also in the Commerce control list, we try to
21 be as specific as possible. We have parameters. For
22 instance, we don't control all vacuum pumps. As you

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1 know, that vacuum pumps which have in this case, we use
2 an enrichment-type end use. So, again, we try to limit
3 our scope of controls and make it specific, I think, as
4 Rich tried to do with his as well, until some people
5 know really what we are concerned about.

6 We also have our broad controls as well.
7 These are the nuclear end use controls. Sometimes you
8 hear people talk about catch-up. These apply to
9 everything which is subject to the AR. I mean, it
10 applies to that vacuum pump as well as your pencil,
11 your pen, your coffee cup. This will impose a license
12 requirement, anything subject to the AR for certain
13 activities, nuclear explosive activities, unsafeguarded
14 nuclear activities, and the following activities,
15 whether safeguarded or not: enrichment facilities or
16 heavy water production facilities. These apply to
17 everywhere except for very few countries. A few
18 countries are exempt, like Great Britain, France, some
19 of the NATO countries, Japan. It also applies to
20 everyone. Like DOE exempts themselves from their own
21 regulations. We don't exempt DOE from ours. So we do
22 impose a license requirement upon DOE if they are

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1 working in the nuclear-related area of certain
2 countries.

3 Next slide. But, again, what is not subject
4 to the 744.2 controls? At first it sounds like
5 everything nuclear. But mining and milling are
6 excluded, just as they are in Rich's; fusion reactors
7 Tokomak and Iter. Commerce does license certain things
8 to the Iter program, but it is predominantly dealing
9 with who are the partners in the Iter program? And in
10 general, fusion is exempt.

11 Also, most of you are familiar with IAEA
12 safeguard facilities. In a previous slide, it talked
13 about unsafeguarded activities. Those are
14 traditionally your unsafeguarded power plants. But if
15 you're dealing with the safeguarded power plants in the
16 world, in the vast majority of the world, generally
17 there is no licensing requirement unless that item
18 itself would require a license to that particular
19 country. For instance, when we get into, say, we
20 recently received the export inquiry for stainless
21 steel pipe for use in a nuclear power plant in the PRC.

22 In 744.2, in general, nuclear power plants,

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1 commercial power plants in the PRC do not trigger a
2 licensing requirement under Part 744.2. So if you had
3 to export stainless steel pipe or a turbine or
4 switching gear to like Qinshan or Daya Bay or something
5 like that, there is no additional licensing requirement
6 put upon it.

7 Next slide. Because I am a distributor of
8 college textbooks, I am going to get requests for
9 foreign customers for textbooks on nuclear engineering.
10 And, just like under the 810 regulations, textbooks are
11 what we consider in the public domain. They are
12 excluded from controls. And we tried to work so we
13 have a common understanding between both regimes, both
14 licensing regimes, as to what constitutes in the public
15 domain. That could also be things like, you know,
16 certain public events, like the American Nuclear
17 Society has a meeting. You present papers and things
18 like that. We generally consider those to be excluded
19 from control.

20 Commerce also maintains what is called an
21 entity list. These are lists of entities for which a
22 license is required for all items generally. And,

1 again, sometimes it can be for nuclear reasons. It can
2 be on there for a lot of other reasons, some for
3 missile proliferation reasons, some for doing some
4 exports related to IEDs that showed up in Iraq. This
5 is, for example, one of the Russian entities. And,
6 yet, the fact that someone is on the entity list means
7 that there is a licensing requirement. It does not
8 mean in itself that no licenses will be required.

9 As Dick mentioned, BARC is on our entity list,
10 Bhabha Atomic Research Centre in India. We realize
11 they do a lot of work, a lot of some nuclear weapons,
12 some basic scientific. Yes, they have a license
13 requirement for all items subject to the ER, but that
14 doesn't mean that every license will be denied. It
15 means that you need to get a license that will be
16 reviewed at the end use, the commodity suitability, and
17 decide whether or not to approve it.

18 We, too, have a deemed export rule. We need
19 to get a license before leasing control of technology
20 or source code to a foreign person, as formerly
21 referred to as deemed export rule.

22 First, let me make a point. When we talk

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1 about deemed export, sometimes people get confused. If
2 you want to export technology to a French company and
3 the French employee comes to your office and you talk,
4 that is not a deemed export. You are exporting it to
5 the French country. It is more akin to we are having a
6 foreign national coming to work at your facility. And
7 he is not working for a host company. So you are not
8 transferring technology back to his host, person who
9 hires him, person -- you're bringing it to a foreign
10 person working in your facility, not to an entity back
11 in his home country.

12 Next slide. In the Commerce Department, we
13 look more at a person's most recent country citizenship
14 or permanent residence. So if someone was born in
15 China, went to Great Britain, became a Great Britain
16 citizen, we treat them as they're from Great Britain.
17 We also have certain exemptions under the deemed export
18 rule, just like Rich does. You persons, if a person is
19 granted U.S. citizenship, they might have been born in
20 China, they came here, and become a U.S. citizen. So
21 they are the same under our rules, also has a green
22 card for those who are granted protected individual,

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1 such as refugee status.

2 We have had some interest regarding the Part 6
3 of form I-129. That is an export certification. It
4 talks about if you are having a foreign national
5 country thing and you are getting a visa. They have a
6 license as it is required from the Department of
7 Commerce, Department of State to release technology or
8 technical data or if they do, do you have to get a
9 license.

10 Next slide. So, really, with respect to the
11 Commerce Department, how does that really impact? If
12 you are a nuclear power plant operator, for the most
13 part, as I showed you in that first slide, most things
14 that are Commerce's jurisdiction at a nuclear power
15 plant don't require a license to most destinations. So
16 if you had a Chinese national coming to work in your
17 nuclear power plant, you don't have to worry about him
18 looking at your turbines or your generators. There
19 still may be a license requirement, which will be
20 addressed under the NRC site access requirements, but
21 as far as our rules so you don't have to go to Commerce
22 and say, "Do I need to get a license for this dual-use

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1 part?" because he may see it, you know, what if I am a
2 valve manufacturer. Again, it depends what type of
3 valves you make, but for the most part, even if a
4 license is required, it will generally be approved.

5 Chinese or Indian nationals possible, again,
6 you know, for the most part, many of these technologies
7 don't require license to China or India with respect to
8 a nuclear power plant. If they are Chinese or Indian
9 nationals and they are still affiliated with a host
10 entity that triggers a licensing requirement, license
11 will be required, but that is almost more -- if you had
12 an individual who was associated with BARC and Indira
13 Gandhi coming to work in your power plant, we almost
14 view that more as an export to BARC and Indira Gandhi.
15 If you are someone who worked at Indira Gandhi five
16 years ago went to work for Tata and is now coming here,
17 we look at that more as just an Indian national. And,
18 you know, we just talked about trying to put in time
19 deadlines.

20 In the Department of Commerce, we review Part
21 810 authorizations. I guess we give our -- do we only
22 review like -- no. I guess we give our concurrence.

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1 We don't have a real say like the State Department
2 does. But, again, our review typically takes a week or
3 two max. DOE does a very thorough job writing up these
4 studies. And we just generally concur in most
5 instances.

6 We have a timeline as well. In our system,
7 the Department of State, Department of Energy,
8 Department of Defense are actually voting agencies.
9 And we have an escalation process as well, which in
10 theory, it's up in the present, day 90, though. I have
11 been doing this for 23 years. It has never gotten
12 quite that high. But, again, so we have a timeline,
13 just as DOE has instituted a timeline. And we also
14 have an electronic system I think DOE is working on as
15 well. I mean, our system, I would say it will be far
16 more complex than DOE's will need to be. So hopefully
17 they won't take some of the bad things, which we have
18 done in ours.

19 That is basically just a very quick overview.
20 And I hope you can see from that that -- you know, I
21 think in this new regulation from DOE that there has
22 been a real attempt to make, you know, a parallelism

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1 where it's possible and also to try to avoid a lot of
2 those questions that we get, you know, "Should I go to
3 DOE and get an 810? Should we come to Commerce?" But
4 I can truthfully say in all the years I have done this,
5 when someone does come to us, we are very good about
6 adjudicating who has jurisdiction. We don't have the
7 many things that we and the State Department have,
8 whether it is a munitions item. For the most part,
9 most of these inquiries are subtle with a phone call to
10 Rich or phone call to Brooke or an email. So for the
11 most part, we hope you can figure it out by yourselves,
12 but if you can't, it's not a huge burden to contact one
13 of the three of us. And we will work it out relatively
14 quickly as to what agency you should go to.

15 MS. STRANGIS: Okay. Thank you to all of our
16 speakers. And now on to the part that you have all
17 been waiting for. We are going to take questions. And
18 the way it is going to work is we are going to take two
19 questions from in the room and then two from the phone
20 and then back and forth. As a reminder, please, for
21 people in the room, don't start speaking until you have
22 the microphone in hand, which someone will bring to

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1 you. And for everyone, if you could state your name
2 and affiliation and spell your name, if possible, for
3 the transcript? That would be very helpful.

4 So let's start in the room. Does anyone have
5 a question?

6 MS. TEPLINSKY: Hi. Elina Teplinsky from
7 Pillsbury, E-L-I-N-A T-E-P-L-I-N-S-KY. This is a
8 question for I guess both Rich and Dick Stratford with
9 respect to the three countries China, Russia, and
10 India. Dick, you specifically were talking about the
11 distinction between civil and military activities in
12 those countries. And, Rich, you mentioned in the
13 discussion of process improvements a potential fast
14 track. Would there be any consideration or a fast
15 track for activities in countries like Russia and
16 China, for example, for exports that have previously
17 been done before? For example, you know, if I have an
18 AP2000 reactor and I have already sold that to a number
19 of countries, I've gotten the specific authorizations,
20 I am applying for new specific authorizations for China
21 and Russia, since a lot of the review has been done
22 already, a lot of the analysis, would you consider

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1 doing some sort of a fast track process when the
2 technology scope is the same and those exports have
3 been conducted before?

4 MS. STRANGIS: So, unfortunately, that is a
5 little outside the scope of what is in the supplemental
6 rule. So we would just ask that you would submit it in
7 writing for us to consider, --

8 MS. TEPLINSKY: Okay.

9 MS. STRANGIS: -- rather than answer here
10 today. Sorry.

11 Anyone else in the room? Up front, I think.

12 MS. MANN: Thank you. I am Melissa Mann with
13 the uranium enrichment company Urenco, U-R-E-N-C-O. I
14 had a question about the deemed export for Rich and
15 possibly for Mr. Resner. Mr. Resner went into some
16 detail on the access authorization for nuclear power
17 plants. Does the deemed export authorization extend to
18 employed foreign nationals approved for access to fuel
19 cycle facilities? And is there any additional overlay
20 for a need to know?

21 MR. GOOREVICH: From the 810 standpoint, the
22 way we wrote it was any U.S. facility that is done in

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1 accordance with NRC access rules and regulations. So
2 to us, it would be any place that the NRC has this
3 program, is implementing it. So whether or not your
4 facility is meeting all of the NRC requirements I leave
5 to Mr. Resner.

6 MR. RESNER: All right. The types of
7 facilities, it depends on the type of material at the
8 facility. In the category 1's, it is usually a top
9 secret with a single scope background, five-year
10 investigation period. In the category 3, it is usually
11 a secret with a national agency check and a ten-year
12 reinvestigation period.

13 And, again, it depends on the type of
14 material. Some of the category 1 facilities have dual
15 regulation, both DOE and the NRC. So they are subject
16 to the DOE HRP program as well as the NRC program. And
17 we have reciprocity with DOE in those cases, those
18 instances.

19 MS. STRANGIS: Okay. Let's go to a phone call
20 question.

21 OPERATOR: If you wish to ask a question on
22 the phone, please press *, then 1 at this time. Okay.

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1 Our first question is from Ajay. Please go ahead.

2 MR. KUNTAMUKKALA: Yep. This is Ajay
3 Kuntamukkala calling from Hogan Lovells. And the last
4 name is spelled K-U-N-T-A-M-U-K-K-A-L-A, and I hope I
5 haven't taken up my question time.

6 My question is on the definition of use in the
7 new proposed rulemaking. The definition of use seems
8 to differ slightly somewhat from the definition of use
9 that is in the 2011 version of the proposed rule. In
10 the 2011 version of the rule, the word "and" is used.
11 So the use definition lists a number of use-related
12 activities and then uses "and." And in the new
13 proposed, revised proposed, rule, DOE is using "or" and
14 wanted to understand whether there is any significance
15 to that change. And was that meant to be different
16 from the approach the Commerce Department takes with
17 regard to the use, which is that you must have all
18 elements of use covered in order to be eligible for the
19 use definition?

20 Thank you.

21 MR. GOOREVICH: Yes. So the question about
22 the term of the definition use and why we changed it

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1 from using the word "and" in there to "or," well, the
2 issue simply was that our intent always was to cover
3 each of the listed activities separately, that very
4 rarely would we find somebody whose use would be
5 operating, installing, maintaining, repairing,
6 overhauling, and refurbishing all at the same time.
7 And so, although we understand Commerce has a different
8 view of use as it applies to their regulations for us,
9 use does with the "or" means that that is the way that
10 our intention was to read it going forward in the reg.

11 We had borrowed a definition from Commerce
12 without fully understanding how Commerce was
13 implementing it. After discussions related to
14 something else, we came to understand it. Commerce was
15 implementing it differently than we intended to. So
16 that's why we made the change. In our sense, if you
17 have to do all of those things at the same time, then
18 very rarely would the definition of use ever come into
19 play with regards to these rules.

20 MS. STRANGIS: Next question on the phone.

21 OPERATOR: There are no more questions in
22 queue.

1 MS. STRANGIS: In the room? Yes? Right here.

2 MS. MEYER: Thank you. Lindsay Meyer from
3 Venable. It's L-I-N-D-S-A-Y M-E-Y-E-R. Thank you for
4 looking to harmonize some of the rules with regard to
5 the deemed export. My question is whether or not there
6 has been consideration given as to dual nationals under
7 the 810.6(b) provision.

8 MS. STRANGIS: I think that is probably also
9 something that we'd want in a comment form so we can
10 consider it.

11 MS. MEYER: Okay. Thank you.

12 MS. STRANGIS: Yes? In the room? Over there.

13 MR. GARRISH: Yes. I'm Ted Garrish from
14 Chem2Hill. And the last name is spelled G-A-R-R-I-S-H.
15 Rich, I would like to follow up on Ajay's question on
16 use. How do you handle consulting on the subjects,
17 even though you don't do them?

18 MS. STRANGIS: Again, that is something that
19 we would want in question, written form.

20 In the back? Madeleine?

21 MR. COHN: Hi. My name is Jeremy Cohn -- it's
22 C-O-H-N -- from Mitsubishi Nuclear Energy Systems.

1 With the original notice in 2011 -- and I appreciate
2 that Mr. Goorevich sort of addressed this point that
3 there was almost a doubling of the number of countries
4 that would require specific authorization under the
5 proposed rule change. The justification now still in
6 the supplemental notice was that it was saying it was
7 "in recognition of the facts" that global markets for
8 peaceful nuclear energy and nuclear fuel cycle trading
9 relationships have become more dynamic in recent years.
10 And I know, Mr. Goorevich, you addressed this briefly.
11 I was hoping you could elaborate on what exactly that
12 meant that markets were more dynamic than in recent
13 years and sort of why it justified the change in the
14 proposed rule.

15 MR. GOOREVICH: Well, I think what we are
16 seeing is when we say, "dynamic," it is really a sense
17 of globalization, meaning that applications that we
18 were starting to see weren't one entity to one entity.
19 It was groups of companies coming together to be able
20 to provide a broader spectrum of technology and bits
21 and pieces of technology. And they were being
22 transferred to potentially second and third parties to

1 support an activity in the final end user.

2 So what we were seeing, was globalization
3 really taking place? And when we looked at how we were
4 implementing the current rule, it was really point to
5 point a model, not one that was very flexible in the
6 way that it needed to be flexible as we were seeing
7 more and more specialization of activities within a
8 broader project taking place. And we were seeing the
9 market change, the marketplace change, with regard to
10 what kinds of technologies, what kind of support, what
11 kind of assistance U.S. companies, applicants were
12 considering.

13 And I think the third point, as I mentioned,
14 was we were seeing the market evolve. So places where
15 we now today view as being potentially vibrant markets
16 for not just reactor sales and other facility sales but
17 also in terms of providing support, operational
18 support, for different nuclear installations around the
19 world, what was changing. And so we felt that all of
20 that was creating what we called in the preamble to the
21 SNOPR a dynamic marketplace for us.

22 MS. STRANGIS: Are there any additional

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1 questions on the phone?

2 OPERATOR: No questions in queue.

3 MS. STRANGIS: Over here?

4 MR. PIERCY: Craig Piercy, American Nuclear
5 Society, P-I-E-R-C-Y. Rich, I just want to say ANS is
6 pleased that you are moving forward with a revised rule
7 and hope that this will sort of be the beginning of an
8 adaptive phase where we see almost regularized order in
9 terms of updates.

10 Question. In the SNOPR, there was some
11 discussion of -- there was an economic analysis done
12 about how things will work under the current reg versus
13 the revised reg. Can you talk a little bit more about
14 the conclusions of that report, what you found?

15 MR. GOOREVICH: Okay. Yes. When we were
16 putting together the supplemental rule, obviously there
17 were some questions about the country list and the
18 potential impact of the number of countries moving from
19 one potential classification to another potential
20 classification.

21 And in talking internally within the
22 government, we made the determination that the rule was

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1 to be what was considered to be economically
2 significant, which meant that we had to put together
3 essentially a market impact study. And we have
4 included that both on the DOE and Department of
5 Commerce websites, the ITA website, Department of
6 Commerce. And it also was made available I think as
7 part of the Federal Register announcement or maybe it
8 is just on the website. I can't remember exactly. I
9 know it is definitely on the websites.

10 And essentially what we did is -- and if I get
11 this a little wrong, I am going to ask Tom Wood, who is
12 from PNNL and one of the economists we used, to jump in
13 here to help me get this right. I am not an economist,
14 and I did not sleep at a Holiday Inn Express last
15 night. So I might get this a little bit backwards.
16 Essentially what we did is the approach we took was to
17 take a look at the potential marketplace for reactor
18 sales as that was really a good way to quantify the
19 impact of the rule and then looked at the countries and
20 how they sort of moved from one list to another with
21 regards to the potential value of reactor sales within
22 those particular countries. And the way we did it was

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1 to look at a number of different well-known and
2 published economic or market surveys of moving forward.

3 And essentially what we found was that because
4 of what we would take as the agreed potential of the
5 reactor sales in countries that had 123s, we had 123
6 agreements with, that were on the current specific
7 authorization list that would slide to the general
8 authorization, we came up with a number of what the
9 value was based upon these four forecasts. And then we
10 looked at the number of countries that are currently on
11 the general authorization list that would go to
12 specific and what the forecast said of what the value
13 was and then compared them.

14 Our numbers depending upon the surveys that
15 you look at, I think three of the four surveys showed
16 that the economic impact was a net positive with the
17 switch. The fourth one was a very, very high estimate
18 where I don't think that anyone, any of the people that
19 we talked to, reasonably felt that that fourth estimate
20 was something that was going to really come to
21 fruition. I can't remember the exact number of
22 reactors to be built by 2030, but it was somewhere in

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1 the neighborhood of like I think 300 reactors to be
2 built between now and 2030, which I don't think any of
3 us really think is going to happen.

4 But I think what might be useful is to ask
5 Tom, if he is on the line still, to chime in and see if
6 I explained that correctly. Tom?

7 Okay. Well, I don't hear Tom. So I am going
8 to take it that I did explain that correctly. But
9 essentially that is the sense that we came up with, was
10 when you look at the market, the market forecasts, and
11 then as you apply the countries and what is the
12 forecast for each of those countries come back, it
13 really comes up to be in our view a net positive of the
14 change. And I think that it is clear that from another
15 sense angle that Dick and I talked about, for those
16 countries for which the government believes there will
17 be significant nuclear trade, there is every attempt to
18 put a 123 in place, which would then allow us to add
19 those countries to the general authorization list.

20 MS. STRANGIS: Anyone else in the room? Front
21 row, right here.

22 MR. BLEE: Yes. Hi. David Blee, US Nuclear

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1 Infrastructure Council. That's B-L-E-E. Let me add
2 that my remarks here reflect the consensus of the
3 council, although not necessarily the views of
4 individual member companies and organizations.

5 You know, this is obviously an extremely
6 important area for those of us involved in nuclear
7 commerce, particularly given the enlightenment in the
8 markets going on overseas. So, to this end, we
9 appreciate the hard work and dedication of the many who
10 have looked at the NOPR 2011, heard the comments, and
11 responded accordingly. We think while we reserve
12 judgment on this, we will take full avail of the
13 meeting to follow in the 90-day process, we are neither
14 here to praise or bury you at this point.

15 But we are encouraged by what we have seen so
16 far. I think some of the process reforms, the tighter
17 definitions, and clearly the transparency of this
18 process is a stark difference in terms of the last, of
19 the 2011, exercise. We had some serious specific
20 policy concerns with the 2011 NOPR, but we also had
21 some serious process concerns with respect to the way
22 that was laid out, longer comment period this time and

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1 so on and so forth.

2 I am still looking for a question here, by the
3 way. You did mention process reforms of the 810
4 procedures. And, again, we are very supportive of e-
5 licensing. The Commerce Department has successfully
6 done e-business. We think we are happy to see the
7 destovepiping up here. Rarely do you see this array of
8 agencies working together, sitting so closely together
9 either. So the coordination there we think is very
10 encouraging.

11 But I would say what we hope is that going
12 forward, that you take the lessons learned from 2011
13 and apply them to these other things you are talking
14 about, such as six-sigma; e-licensing; as well as, we
15 think, extending into some other areas where perhaps
16 improvements and refinements are needed, such as the
17 123s.

18 So I guess the only question I have is, when
19 is the September meeting?

20 MS. STRANGIS: I don't think we have a date
21 yet. We are looking at late September probably, but we
22 will put a notice out well ahead of time.

1 MR. BLEE: Okay. Thank you.

2 MR. CATES: Hi. Dwight Cates with Fluor.

3 Last name is C-A-T-E-S. I had just a quick question,
4 following up on the 77 countries that went from
5 eligible to ineligible for a general authorization
6 under the SNOPR. For those 77 countries, has -- and I
7 guess this is a question for Rich. Do you have an
8 estimate or some type of an understanding of with that
9 change, how many more specific authorizations or other
10 interactions you are going to have based on that change
11 from licensees, people seeking authorization? Will
12 there be a dozen? Will there be two dozen, just based
13 on current work overseas by companies that are in those
14 countries right now?

15 And then, secondly, would there be in your
16 estimation some commercial impact and delay of
17 activities in those countries that may be ongoing or
18 about to occur based on this change?

19 MR. GOOREVICH: Okay. Yes. Actually, we do
20 have some estimates on that. When we first looked at
21 this, we took a look at obviously every country that is
22 currently in the general authorization list or needs to

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1 be reporting of those countries to be in compliance
2 with the 810. When we took a look at those back then,
3 what we saw was in a given year -- or no. It was
4 actually over a three-year period. Over a 3-year
5 period, we saw something like only 30 -- 30 what?
6 Thirty-seven? Thirty-nine. Sorry. Thirty-nine
7 reports of general authorizations over a 3-year period
8 to those 77 countries.

9 Of that, most of those, I think something like
10 21 of those, reports dealt with what would be foreign
11 nationals working at U.S. utilities. So under the
12 supplemental, those would be generally authorized. So
13 from the 39 minus the 21, we get down to 18. So we see
14 that we are potentially somewhere along the lines of
15 about 18.

16 But, having said that, when I move UAE,
17 Ukraine, the Mexico, Chile PSAs, and Kazakhstan out of
18 that, I think move those 810s, for which we are
19 probably seeing close to about a dozen when you add
20 those up, maybe a little bit more. And so the
21 difference might be a handful, three, four, or five,
22 per year. That is based upon our existing data.

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1 Now, if countries weren't reporting under the
2 general authorization, then this results in something
3 different. I mean, obviously we don't know that. But
4 under our numbers, we are not expecting a huge increase
5 at all. And, in fact, you know, probably in terms of
6 time-wise and resource-wise, Ukraine, Kazakhstan, UAE
7 because they are associated with larger potential deals
8 and we don't see any of those larger potential deals
9 right now in any of those 77 countries, the time for us
10 to be able to do those sort of 4 or 5 in those 77
11 should be relatively easy and should be relatively
12 short once we get the assurances from those countries.

13 MS. STRANGIS: Any other questions in the
14 room?

15 MS. BERRIGAN: Hi, Rich. This is Carol
16 Berrigan with the Nuclear Energy Institute. That's C-
17 A-R-O-L B-E-R-R-I-G-A-N. And the Nuclear Energy
18 Institute was in the slide. You can just put us down
19 as NEI. Rich, I had a specific question for you
20 regarding general authorization with Mexico. I noticed
21 that in the SNOBR, you have included activities related
22 to INFCIRC/203, parts 1 and 2 and INFCIRC/825. This

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1 largely covers the activities at Laguna Verde. Would
2 it also include additional units at Laguna Verde if
3 Mexico decided to move forward with them?

4 MS. STRANGIS: I think that is probably best
5 received in a written comment.

6 MS. BERRIGAN: Okay.

7 MS. STRANGIS: Sorry. Anyone else? Over
8 here.

9 MR. BLEE: Yes. Since so many of the
10 questions here have been submitted for written comment,
11 could you reilluminate the process for that in terms of
12 when? What is going to happen in terms of submitted
13 written comment? And how are you going to deal with
14 that?

15 MS. STRANGIS: So this time I believe there is
16 a 90-day comment period. And as we start receiving
17 comments, the program is evaluating them, looking at
18 them. We looked at every single one we received. And
19 that is why you see a lot of the changes that you see
20 from the original NOPR to the supplemental.

21 MR. BLEE: In other words, you will take them
22 for comment for 90 days. You are not going to be doing

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1 them -- sometimes in the process, some of these
2 processes, they will provide clarification to
3 procedural questions, things like that, and guidance in
4 terms of interpretation. So essentially there is a
5 blanket comment period for 90 days? No responses will
6 be provided?

7 MS. STRANGIS: That is my understanding. Let
8 me confirm. Yes. That is.

9 MR. BLEE: That is your understanding?

10 MS. STRANGIS: Yes.

11 MR. BLEE: Okay.

12 MS. STRANGIS: Down in the front.

13 OPERATOR: And, again, if you have a question,
14 please press *1 at this time.

15 MS. STRANGIS: Is there a question on the
16 phone?

17 OPERATOR: There are no questions on the phone
18 line.

19 MS. STRANGIS: Thank you.

20 MS. TEPLINSKY: Hi. Elina Teplinsky with
21 Pillsbury. Hopefully this is just a clarification
22 question that you can answer. With respect to the

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1 operational safety general authorizations at
2 810.6(c)(2) and (c)(3), (c)(2) provides operational
3 safety to existing nuclear reactors. And (c)(3) talks
4 about existing proposed and new-built reactors. If you
5 could clarify the difference between those two general
6 authorizations?

7 And also with respect to the 45-day notice
8 period, it states, "DOE approves activity in writing
9 within 45 days, 45 calendar days, of the notice." If
10 DOE does not provide a response in writing, does that
11 mean the activity is generally authorized and the
12 person can go ahead in conducting it?

13 MR. GOOREVICH: Okay. So the intent behind
14 the operational safety Elina talked about in
15 810.6(c)(2) and (c)(3), the difference between (c)(2)
16 and (c)(3) isn't the new versus existing. The
17 difference is in (c)(2), what we are really talking
18 about here is a U.S. person providing furnishing
19 operational safety to existing safeguarded civilian
20 nuclear reactors outside the United States. And the
21 idea being here is if you meet the definition of
22 operational safety, it would be generally authorized.

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1 And the way that we have this set up is that if we
2 believe that it is going to be generally authorized
3 under the operational safety, write us and tell us that
4 that is what you plan to do. Within 45 days, we will
5 notify you that we either agree or disagree that you
6 meet the, that the activity meets the, definition of
7 it. And then if it's that we agree that it does meet
8 the definition, then you will just get a note back from
9 us saying, "Yes. We agree it is generally authorized"
10 and provide the reporting in accordance with 810.11 in
11 the reporting requirement section.

12 In subsection (c) (3), what that is about is
13 about having U.S. persons furnishing technical
14 information to a foreign person who is helping U.S.
15 nuclear reactors increase their operational safety.
16 And there the difference is overseas with the overseas
17 version, we couldn't envision a situation where for a
18 new build, we needed to, someone needed to, provide
19 operational safety support because the reactor really
20 hasn't been built yet. That would be part of, as we
21 would see it, just the 810 authorization with regards
22 to building the reactor itself.

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1 In the U.S., obviously there could be a
2 situation where somebody who is proposing to build a
3 reactor wants a peer review done on its potential
4 workings and potential operations of that existing
5 reactor as part of the NRC licensing requirements for
6 that reactor, part of the startup for that reactor.
7 And we wanted to make sure that that was clarified that
8 that would also be generally authorized if it met the
9 definition of operational safety. And, again, just let
10 us know that that is what is going on 45 days before it
11 happens. And we will send you back a note saying that
12 we agree that it is generally authorized.

13 MS. STRANGIS: Do we have any other questions
14 in the room? Right here.

15 MR. JONES: Hi. This is Ted Jones with NEI,
16 and it's T-E-D J-O-N-E-S. My question relates to
17 reporting requirements. In the 2011 NOPR, the
18 reporting requirements for general authorizations had
19 been deleted. And given that the NOPR would have
20 dramatically tightened eligibility for general
21 authorization, the changes to the country list, it made
22 some sense that the reporting requirements would be

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1 commensurably eased. The SNOPR proposes to reinstate
2 these requirements. What is the basis for this
3 decision and the increased regulatory burden that it
4 would bring about?

5 MR. GOOREVICH: Quite frankly, it was a
6 mistake in the NOPR. It should have been reporting
7 requirements for general authorization as it was. It
8 got past us. We noticed it as soon as it went out, but
9 it was too late to change it. We have essentially just
10 restated into the SNOPR what is in the current
11 regulation with regards to the reporting requirements,
12 but we have hopefully clarified it to make the
13 reporting requirements a little more uniform and a
14 little easier for everyone to move forward.

15 MS. STRANGIS: Anyone else?

16 MS. BERRIGAN: Rich, it is Carol Berrigan
17 again with NEI. I have a question regarding the
18 wording that you have in the SNOPR. Originally you had
19 added to the SNOPR new exclusions for publicly
20 available information and publicly available
21 technology, but there had formerly been a general
22 authorization for open meetings with a definition for

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1 it, which has since been deleted in this recent
2 publication. Is the intention that open meetings would
3 be enveloped under public information and publicly
4 available technology? Is that the intention and how
5 that should be read?

6 MR. GOOREVICH: Yes. For those on the phone,
7 yes. I was shaking my head yes. There is no intention
8 to change that at all, but in the effort to make the
9 definition consistent with Commerce and with NRC, we
10 changed the words. But our senses would be that yes,
11 open meetings would fall within that scope of publicly
12 available information.

13 MS. BERRIGAN: Okay. Great. Another question
14 for you is regards to peer assessments. In the
15 preamble language, there was some discussion of
16 organizations like INPO and WANO conducting peer
17 assessments as important to assuring global nuclear
18 safety. And although the SNOBR preamble discusses
19 this, it only provides general authorization for State
20 Department or NRC-approved programs on a general basis
21 under 10 CFR 810.2(c)(1) or 810.6(d). How do you
22 envision a process for this going forward in terms of

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1 peer assessment? Is this something that folks would
2 approach the NRC or State Department about or would
3 this be on a one-off basis each time one of these peer
4 assessments is going on? Forty-five days in advance
5 they would -- is that the intention? I am just trying
6 to understand from the preamble to what is in the rule
7 what the intention there is.

8 MS. STRANGIS: I apologize again, but that
9 sort of explanation would be something that would look
10 for in a written comment.

11 Anyone else? If there are no other questions,
12 keep in mind that if we decline to answer your question
13 today -- actually, yes?

14 MS. CHAUDHARI: This is Preeti Chaudhari with
15 the Department of Energy. And I just wanted to clarify
16 that the comments that are received in writing will be
17 responded to not during the open comment period but in
18 the final rule. So there will be consideration, great
19 consideration, of your comments. We welcome them, look
20 forward to them, and would love to receive them. And
21 they will be responded to, just not during the open
22 comment period.

1 MS. STRANGIS: Thank you.

2 If there is nothing else, thank you all so
3 much for coming. And thank you for those on the phone
4 who took the time to call in. We all look forward to
5 working with you all in the future. I am sure your
6 escorts will be happy to stop at a restroom on the way
7 out. And have a great afternoon.

8 (Whereupon, at 3:37 p.m., the Part 810
9 revisions rollout meeting was concluded.)